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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Hartington Telecommunications Co., Inc.)

CC Docket No. 92-237

Petition for Waiver of the Four Digit Carrier)

Identification Code (CIC) Implementation)

Schedule)

To: Network Services Division
Common Carrier Bureau

PETITION FOR WAIVER

Hartington Telecommunications Co., Inc. (Hartington), by its attorney, pursuant to 47 C.F.R. § 1.3, hereby petitions the Commission for a waiver of the four digit Carrier Identification Code (CIC) implementation requirement contained in the Commission's Second Report and Order (Second Report and Order), 7 CR 709 (Comm'n 1997).¹ In support whereof, the following is respectfully submitted:

¹ 47 C.F.R. § 1.3 provides

§1.3 Suspension, amendment, or waiver of rules. - The provisions of this chapter may be suspended, revoked, amended or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.

While it does not appear that the four digit CIC implementation was incorporated into any of the Commission's rules, there does not appear to be any reason to conclude that 47 C.F.R. § 1.3 does not permit waiver of uncodified rules or policies. Informal discussions with the staff indicated that petitions for waiver of the four digit CIC implementation schedule would be entertained; the staff's position is supported by precedent. See e.g. Southwestern Bell Telephone Company Tariff F.C.C. No. 73, 1997 FCC LEXIS 3686 (Comm. Car. Bur. July 14, 1997) (DA 97-1472) (para. 13) ("Under Section 1.3 of our rules, the Commission may waive any provision of its rules or orders if 'good cause' is shown.")

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1) Hartington is a rural local telephone exchange carrier located in Hartington, Nebraska. Hartington has 1600 access lines and serves a population of 3000 persons. On September 25, 1997 Hartington signed a \$408,764 contract with Nortel for purchase of the switching equipment which will be required to implement the four digit CIC implementation announced in the Commission's April 1997 Second Report and Order.² Hartington has not received any requests for provision of equal access, bona fide, or otherwise and Hartington's current equipment and software is not capable of providing equal access service and Hartington does not currently pass CICs in its signaling.³

2) Hartington has been advised that the new switching equipment may be delivered before the end of the year. Moreover, even if the switch could be delivered before the end of this year, installation and testing likely could not occur until March 1998 at the earliest.

3) In order to obtain a waiver pursuant to 47 C.F.R. § 1.3 the petitioner must

demonstrate that special circumstances warrant deviation from the rules or orders and that such a deviation would better serve the public interest than the general rule. Moreover, grant of a waiver presumes the validity of the general rule, must not undermine the policy served by the rule, and must not be so broad as to eviscerate the rule. Rather, the request must be tailored to the specific contours of the exceptional circumstances.

Southwestern Bell Telephone Company Tariff F.C.C. No. 73, 1997 FCC LEXIS 3686 (Comm. Car. Bur. July 14, 1997) (DA 97-1472) (para. 13) (footnote omitted).

² The equipment being replaced was purchased in 1985. After discussing the matter with the existing switch manufacturer, Nortel, it was determined that it was not economically feasible to merely upgrade the existing equipment. A copy of the signature page of the Nortel purchase agreement is attached hereto.

³ Hartington's customers make long distance calls through Feature Group B dialing arrangements. Customers making interLATA calls are served by AT&T. Customers who desire to use services of another interexchange carrier may make interLATA calls using credit card service or Feature Group B dialing arrangements.

4) The Second Report and Order explains that CICs “are numeric codes that, as originally devised, enabled local exchange carriers (LECs), as providers of interexchange access services, to identify access customers in order to bill and route traffic to such customers. CICs facilitate competition by enabling callers to use the services of any number of telecommunications service providers.” Second Report and Order, at para. 1. The Second Report and Order notes that “demand for CICs has grown” and that “implementation of the Telecommunications Act of 1996 . . . most likely will increase the number of telecommunications carriers entering the market and create an increased need for CICs so that traffic can be routed to these new entities.” Second Report and Order, para. 3. The Second Report and Order shortened the “six-year transition to a two-year and nine month transition” “because of the changing circumstances since the record in this docket closed in 1994.” Second Report and Order, para. 4. Thus, the policy served by the Commission’s accelerated four digit CIC implementation schedule is to foster competition in the interexchange markets.

5) It is respectfully submitted that in view of the circumstances relating to Hartington’s situation, and in view of the policy goals underlying the four digit CIC conversion implementation schedule, the public interest would be served by granting Hartington a six month waiver, until June 30, 1998, of the four digit CIC conversion requirement. The following supports Hartington’s request.

6) As discussed above, the policy objective underlying four digit CIC conversion is the expansion of competition in the interexchange market. The purpose of this rule would not be thwarted by grant of the requested waiver. Hartington has never received a request to provide equal access and, to date, no interexchange carrier with a four digit CIC has shown any interest in serving

Hartington's exchange area. While it may be theoretically possible that an interexchange carrier with a four digit CIC would request access to Hartington's exchange between now and June 30, 1998, such a possibility seems remote at best. Even if such a request were received, Hartington's exchange area is a very small market and the public interest would not be adversely affected by the slight extension requested herein.⁴ Accordingly, because no carrier has requested equal access, and because Hartington would generally not be required to provide equal access until three years after receiving a bona fide request for access, competition in the interexchange market will not be harmed by a limited extension of time to implement the four digit CIC conversion.

7) The Commission notes in the Second Report and Order that it is providing a twenty-three month four digit CIC conversion implementation schedule, Second Report and Order, para. 4, presumably because the Commission proposed the conversion in the 1994 Notice of Proposed Rulemaking, 9 FCC Rcd. 2068, however, from an LEC manager's point of view, only an eight month transition period has been provided. Oft stated Commission policy is that items discussed in notices of proposed rulemaking are not binding because there is no assurance that the rule or policy will be adopted as proposed. See e.g., Multimedia, Inc., 11 FCC Rcd 4883, 4892 (Comm'n 1995) (para. 27) (an applicant "is not entitled to rely on our Further Notice of Proposed Rulemaking, which represents proposed policy and not existing law. An applicant before the Commission is not entitled to the benefit of a policy not yet adopted.")

⁴ It is noted that Hartington would be afforded three years to upgrade its switch equipment to afford interexchange carriers equal access. See MTS and WATS Market Structure Phase III, 100 F.C.C.2d 860, 875 (Comm'n 1985) (para. 48). Thus, there appears to be some tension between the Second Report and Order which requires a nearly immediate upgrade to four digit CICs and the Commission's long standing policy of affording independent LECs three years to comply with a bona fide equal access request.

8) It seems reasonable for manufacturers and carriers to have concluded that the transition period would commence upon release of a report and order. The Notice of Proposed Rule Making does not indicate that the transition period would begin running while the Commission considered the matter over several years, especially where the Notice of Proposed Rulemaking extolled the virtues of lengthening the transition period from 18 months to six years. Notice of Proposed Rulemaking, 9 FCC Rcd. at 2077 (para. 54). Moreover, manufacturers and carriers did not learn of the “changing circumstances” which the Commission indicated warranted a shorter transition period until the Commission released the April 1997 Second Report and Order. Thus, while the Commission may have discussed the possibility of requiring new equipment and software in 1994, the Commission’s proposal did not crystallize until the release of the April 1997 Second Report and Order and LECs could not reasonably rely upon the 1994 Notice of Proposed Rulemaking to order equipment and schedule installation. Hartington is proceeding with deliberate speed given the “changing circumstances.”


9) Hartington has signed a contract for the delivery of the required switch equipment thereby evidencing Hartington’s intent to implement the four digit CIC conversion as soon as practicable. Moreover, no interexchange carrier has requested that Hartington implement equal access and grant of the instant waiver will not interfere with competition in the interexchange market. Accordingly, it is respectfully submitted that Hartington has presented unique and compelling circumstances demonstrating good cause that grant of the instant waiver request would serve the public interest.⁵

⁵ A copy of the instant petition for waiver is being served upon Geraldine Matise, Chief, Network Services Division, 2000 M Street, N.W. #235. It is noted that the staff advised undersigned counsel that no FCC filing fee is required with the instant petition.

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October 9, 1997

Respectfully submitted,
HARTINGTON TELECOMMUNICATIONS
COMPANY, INC.



Timothy E. Welch

Its Attorney

ACCEPTANCE

Subject to the approval of the Administrator, the Owner

hereby accepts the Proposal of Nortel

for the Project(s) herein described for the total Base Bid of

\$ 364,692.00 and

Alternate For:

Spare Parts, Item(s)		\$	<u>32,214.00</u>
Maintenance Tools, Item(s)		\$	<u></u>
Alternate No. 1 (add) (deduct)		\$	<u></u>
Alternate No. 2 (add) (deduct)	Buyback of Old Equipment	\$	<u>-40,000.00</u>
Alternate No. 3 (add) (deduct)		\$	<u></u>
Alternate No. 4 (add) (deduct)		\$	<u></u>
Alternate No. 5 (add) (deduct)	Calling Name Delivery & Blocking	\$	<u>27,500.00</u>
Alternate No. 9 (add) (deduct)	Basic Rate ISDN	\$	<u>24,358.00</u>
The total contract price is		\$	<u>408,764.00</u>

By Hartington Telecommunications Co., Inc.

OWNER


PRESIDENT

ATTEST:


SECRETARY9-25-97
DATE OF ACCEPTANCE

CERTIFICATION

I hereby certify under penalties of perjury that I have reviewed the forgoing PETITION FOR WAIVER and that except for these matters about which official notice may be taken, the statements made therein are true and accurate to the best of my knowledge, information, and belief.



William Dendinger, Manager

Hartington Telecommunications Company, Inc.

October 9, 1997